



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/169554

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 10, 2015, the agency issued Child Care Client Overpayment Notices and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of child care

benefits in the amount of \$2,152.31 for the period of June 15, 2014 – November 30, 2014. The matter is designated as Claim # [REDACTED]. The notice also informed the Petitioner of the right to appeal by filing a request for a hearing within 45 days of the date of the notice.

3. On September 11, 2015, the agency issued a notice of state tax intercept to the Petitioner at her address on [REDACTED].
4. On October 22, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action by an agency concerning recovery of child care benefits must be filed within 45 days of the date of the action. Wisconsin Shares Child Care Manual, Section 3.5.3. An appeal of a tax intercept action be filed within 30 days of the date of the notice. Wis. Stats., § 49.195.

In this case, the Petitioner testified that she did receive the notices at her address on [REDACTED]. She conceded she did not pay attention to the appeal deadline. I conclude that the Petitioner's appeal is not timely as to the merits of the overpayment action.

With regard to the tax intercept action, the Petitioner's appeal is timely.

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or childcare payments made incorrectly.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.
(emphasis added)

The Wisconsin Shares Child Care Manual Section 3.7.2 requires the Department to issue three dunning notices to an individual with an overpayment prior to taking action to collect via tax intercept. The Department did not produce evidence that it issued three dunning notices to the Petitioner before issuing the tax intercept. The Department testified at the hearing that because there is a pending collection action against the Petitioner on another matter, this second overpayment action went right to collections. The law does not allow this. The second overpayment action is a separate action involving a different claim, different set of circumstances. Dunning notices from a year prior on a separate matter do not meet the requirement of sending three notices before collections on this matter. Therefore, I must conclude that the Department has not properly issued a tax intercept and the Department must cease any action to intercept the Petitioner's taxes on Claim # [REDACTED]. This decision does not prevent the Department from properly issuing a tax intercept to the Petitioner on Claim # [REDACTED] if it chooses to and if it does so in accordance with the law.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is not timely as to the overpayment action.
2. The Petitioner's appeal is timely as to the tax intercept action.
3. The Department did not demonstrate that it properly issued a tax intercept to the Petitioner for Claim # [REDACTED]

THEREFORE, it is**ORDERED**

That this matter is remanded to the Department to take all administrative steps necessary to rescind the September 11, 2015 tax intercept action against the Petitioner for Claim # [REDACTED] and cease all actions to intercept the Petitioner's taxes based on the September 11, 2015 notice of action. These actions must be completed within 10 days of the date of this decision.

With respect to all other issues, the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of January, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 22, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit